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File No. O. Registration 49

Legal Department

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Subject:—

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Opinions Under the Indian Registration Act 1908.

File No. O. Registration/49

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C O N T E N T S

Legal Department File No. O.Registration/49.

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JPS.7/6/50.
4 copies.

S/6

L.D.No. 8106. dt. 30/5/40.

Submitted with reference to Chief Secy's note at pp. 16 and 18 ante. Lady Sitadevi of Baroda has purchased some immovable property at Malbar Hill from Sir Kikabhai Premchad, a transfer deed in respect of which has been presneted for registration. The question for consideration is whether Govt. can ask the Registrar not to register the sale deed.

R.L.A. - Sd/-

JPE.7/6/456
4 copies.

Office of the R.I.A.

Sub-section (1) of section 22A of the Indian Registration Act, 1908, empowers the Provincial Government to declare by notification in the Official Gazette that registration of any document or class of documents is opposed to public policy. What is "public policy" is not defined in the Act. Section 22A was inserted in the present Act by Bombay Act No. XXIX of 1938. A note on clause 2 of the Bill underlying the Act says that "the facilities afforded under the Indian Registration Act, 1908, for the voluntry registration of documents are frequently absued by private training instituttions, which advertise the diplomas or certificated granted by them as "Government registered" diplomas or certificates in order to creat the belief that the courses for such diplomas or certificates are recognised by Govern: ment. It is desirable to empower Government to prevent the abuse of the provisions of section 18 of the Act." It will appear from the above note that section 22A was intended to prevent registration of objectionable documents on the ground that they would result in the deception of the public. Such deception would undoubtedly be treated as opposed to public policy within the accepted meaning of that expression. It has been repeatedly observed in judicial decisions that great caution is necessary in considerating what is against public policy, and that public policy is a very unruly horse and when once you get astride it, you never know where it will carry you. Nevertheless public policy is generally co-related with the conception of publmic good and is not to be confused with politieal policy. In the case of Egerton v. Earl of Brownlow (1853) 4 House of Lords Cases, at p.1, Lord Truro observed at p. 196 as follows:-

> "Exception have been made to the expression of 'public policy', and it has been confounded with what may be called politieal policy; such as whether it is politically wise to have a sinking fund or a paper circulation, or the degree and nature of

interference....

interference with foreign States; with all which, as applied to the present subject, it has nothing whatever to do. Public policy, in relation to this question, is that principle ~~in relation to this question, is that principle~~ of the law which holds that no subject can lawfully do that which has a tendency to be injurious to the public, or against thepublic good, which may be termed, as it sometimes has been, the policy of the law, or public policy in relation to the administrationof the law."

The rules for acquisition of property by Rulers contained in G.R'P. & S.D. No. 411 dated 27-2-1941 are based more on political policy than on public policy of the kind known to law. For, there is nothing inherently injurious to the public good in a Prince buying property in the Provinces of India. The prohibition was intoded more for the purpose of averting the embarressing political situtation which might result from the acquisition of property by a Prince in relation to the exemption which he enjoyed from legal process. Even the Government of India are now of opinion that since relatives of Rulers do not enjoy any immunity from civil and criminal proceedings in the Provinces of India, there should be no restriction on the acquisition of property in Provinces by such relatives, and that they may be governed by normal procedure applying to other citizens. The Government of India have, therfore, expressed the view that the Provincial Government's consent for the acquisition of property even by Princes themselves should hereafter be given as a matter of course unless there are any reasons to the contrary. Accordingly the Rules are

being.....

being modified by omitting reference to near relatives or relatives. Whatever be thopolitical status of Lady Sitadevi, she must undoubtedly be treated to have acquired the private status of being the wife of the Maharaja of Baroda, andas such she is a relative of the Maharaja. Even the present political policy of the Government of India would not justify theprohibition of purchase by her of property in a Province of India In the extreme event of Lady Sitadevi not being regarded as the lawfully wedded wife of the Maharaja, her case would not fall under the Rules at all, and a purchase of property by her cannot be prohibited on any ground, political or otherwise. It follws, therefore, thatit would not be legally feasible for the Provincial Government to declare under section 22A of the Indian Registration Act that the registration of the document is opposed to public policy. There are no other provisions in the Act under which it will be possible to issue any direction requiring the Registrar to refuse to register the sale deed in question.

Id/- P.M.L.
14/6/

Remembrancer of Legal Affairs.

U.R. to P. & S.D. No. 6586, dated the 15th June 1949.

JPE.7/6/56.
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Office of the R.L.A.

Indian Registration Acts, 1908. Sections 32, 33, 40 and 41. Whether an agent of the testator or donor of an authority to adopt can present for registration, a will or an authority to adopt during the lifetime of the lifetime of the testator or donor.

Code Order 358 provides:-

(1) During his life time a testator may either personally or by an agent duly authorised by a power of attorney authenticated under section 33 of the Indian Registration Act present his will for registration.

(2) An authority to adopt may also be presented for registration during his life time by the donor or his agent authorised as above.

The Inspector of Registration, I Division, Surat, in his letter dated 21st January 1949 at page 11 has taken the view that in view of the Privy Council decision in 31 Bom. L.R. 293, the aforesaid Code Order is invalid and the testor or the donor of any authority to adopt must himself present the will or the document relating to the authority to adopt and not through any agent appointed under section 33 of the Indian Registration Act. The R.L.A. is requested to advise.

2. The view taken by the Inspector of Registration, I Division, Surat is not correct. Under section 40 of the Indian Registration Act the testator or after his death any person claiming as executor or otherwise under the will and the donor or after his death the donee of any authority to adopt or the adoptive son may present it to any Registrar or Sub-Registrar for registration. Under section 41(1) a will or an authrotiy to adopt presented for registration by the testator or donor may be registered in the same manner as any other document. Reading these provisions together it is apparent that any person claiming as the executor or otherwise under he will or the donee of any authority to adopt or the adopted son can present the document for registration only after the death of the executor or the donor of any authority to adopt, and if the document is to be presented for registration during the life time of the tester or the donor, he

can.....

can do so. In 31 Bom. L.R. p. 299 the Privy Council held that the executor, legatee or donee of a power to adopt might possibly under section 32 be considered as a person claiming under the instrument. But a person who has been duly authorised by a power of attorney under section 33 would be acting as an agent within the meaning of section 32(c) and would not be claiming under the document; nor could he be considered as a representative or assignee of such person within the meaning of clauses (a) and (b) of section 32. Consequently, an agent duly authorised by a power of attorney can present a will or the document relating to the power to adopt for registration. It is not necessary that the testator or the donor of such power to adopt should himself present the document for registration. This view is supported by the Advocate General's opinion No. 1 of 1913 dated 11th January 1913, which is no way affected by the aforesaid Privy Council decision.

Id/- P.M.L.
29/8

Remembrancer of Legal Affairs.

e. 9796 dated the 30th August 1949.

JPE.7/6/56.
4 copies.

L.D.R.I.No.16460
Dated 10/10/49

submitted.

A deed of conveyance forRs. 1666-10-0 pupesting to be signed by two vendors was actually executed by one vender and was regiser-ed on 5-4-1949. The remaining executant executed the same document.on 17-6-49 and presented it for re-registration. The points raised are (1) Whether any fees for re-registration of documents under section 24 of theI.R. Act. (2) If so whether it is necessary to amend Table Fees prepared under Sec. 78 of the Act The R.L.A. is requested to advise.

JPE.5/6/56.
4 copies.

Office of the R.LA.

Indian Registration Act, 1908. Section 24.

Under section 24 of the Indian Registration Act where there are several persons executing a document at different times such document may be presented for registration and re-registration within four months from the date of each execution, Section 78 empowers Provincial Government to prescribed fees for registration of documents etc. There is no specific provision in section 78 to enable Government to prescribed fees for re-registration of documents falling under section 24. However, section 25 gives a clear indication that the fees for re-registration of the documents falling unde section 24 will be the same as those for registration of such documen s, for under that section ie. section 25, the Registrar is given power to accept for registration all documents presented to him for registration ~~all documents presented to him for registration~~ even after the expiry of the period, prescribed in that behalf, provided the delay does not exceed four months and fine not exceeding ten times the amount of the proper registration fees, as directed by the Registrar, is paid. If a re-registration of a document falling under section 24 is not liable to any fees, section 25 would be inapplicable to such documents and thereby it would be rendered nugatory. That could not be the intention of the Legislature. Consequently, reading sections 24 and 25 together it appears that re-registration of documents falling under section 24 would be liable to the same fees as those for registration of the documents. This inference is further supported by the decision in Muhamad Emrax v. Birj Lall, (1 Allah. 465) where it was held that section 24 contemplatd partial registration of the deed as to the person executing it, that is to say, the deed though registered would not be deemed to be registered in respect of the person who has not executed it, and on his so executing it and presenting if for registration, it would be deemed to be as good as a fresh registration in respect of such person. If necessary, under the cirumstance, a specific rule may be made under section 78 prescribing the same amount of fees for re-registration of documen falling under section 24 as those for registration of such documen

P.T.O.

10/- F.H.L.

21/11/

Remembrancer of Legal Affairs.

U.R. to R.D.,No. 12306,

dated the 22nd November 1949.

JPE.7/6/56.
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